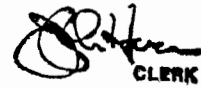


FILED

AUG 05 2005

  
CLERK

UNITED STATES DISTRICT COURT  
DISTRICT OF SOUTH DAKOTA  
NORTHERN DIVISION

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HERMAN SCHUMACHER,  
MICHAEL P. CALLICRATE, and  
ROGER D. KOCH,

Plaintiffs,

-VS-

TYSON FRESH MEATS, INC.,  
EXCEL CORPORATION,  
SWIFT BEEF COMPANY, and  
NATIONAL BEEF PACKING  
COMPANY, L.L.C.,

Defendants.

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CIV 02-1027

ORDER AND OPINION

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Various motions are pending.

The motion to withdraw (Doc. 419) by attorney Michelle M. Douglas should be granted.

The joint motion (Doc. 423) to set a pretrial schedule should be granted. The schedule set forth in the motion should be adopted by reference with a few exceptions. The trial should be continued until April. The trial should commence on Monday, April 3, 2006. Two weeks will be set aside for the trial. The time to serve motions in limine, proposed jury instructions, and a trial brief should be set to coincide with the new trial date. Proposed voir dire questions need not be submitted unless there are questions that the parties want the court to ask since the parties do not want to ask them.

The defendants' joint motion (Doc. 420) to extend the opt-out period and to require further efforts to determine what certain custom feedlots have done as to their customers should be granted under certain conditions.

Apparently, 1,469 custom feedlots were at issue. Of that number, 235 have notified their customers of the class notice, 63 have furnished names and addresses of their customers to plaintiffs, 221 did not have customers who were potential class members, and 24 feedlots in

Kansas were notified, resulting in the class notice going to 781 potential class members in Kansas. This leaves 926 feedlots. Plaintiffs claim they could not contact 368 of them initially. It is unclear to the court as to whether this means that 558 of the 926 were reached by telephone. It is unclear what the responses were. Apparently, plaintiffs later reported there were 94 feedlots for which telephone numbers could not be obtained. The court is unclear as to whether this means that plaintiffs had contacted 274 additional feedlots (368 less 94). It is also unclear what the responses were. Apparently, defendants then supplied most of those 94 telephone numbers. Later, plaintiff requested that defendants supply telephone numbers for 524 feedlots and defendants refused to do so since the opt-out deadline had by then expired.

Now, therefore,

IT IS ORDERED, as follows:

- 1) The motion to withdraw (Doc. 419) by attorney Michelle M. Douglas is granted.
- 2) The joint motion (Doc. 423) to set a pretrial schedule is granted. The schedule set forth in the motion is adopted by reference with a few exceptions. The trial will now commence at 9:00 a.m. on Monday, April 3, 2006. Two weeks will be set aside for the trial.
- 3) The deadline for serving and filing motions in limine, proposed jury instructions, and a trial brief is Monday, March 6, 2006. Any response to any motion in limine shall be served and filed by no later than Thursday, March 16, 2006.
- 4) The defendants' joint motion (Doc. 420) to extend the opt-out period and require efforts to determine what certain custom feedlots have done as to their customers is granted.
- 5) Defendants shall forthwith supply to plaintiffs the telephone numbers and current addresses (if not already supplied) as to custom feedlots as to which the plaintiffs have reported not having the numbers or addresses.
- 6) Plaintiffs shall then promptly telephone such feedlots to determine what, if anything, the feedlots have done as to forwarding the class action notice to their customers or, in the alternative, as to supplying the names and addresses of feedlot customers who sold cattle to one or more of the defendants during the time frame in question.
- 7) Plaintiffs shall report to the court and the defendants in writing (a) what has been learned as a result of the telephone conversations, (b) what the feedlots will be doing to assist the

plaintiffs in providing notice to possible class members, (c) which feedlots by name and address will not do anything to assist plaintiffs, (d) what action plaintiffs have taken or will take to force compliance, and (e) what the breakdown is as to what the 1,469 feedlots have done or what the status of the feedlots may be.

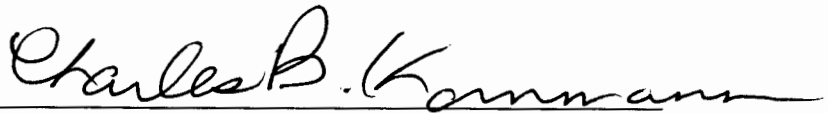
8) The opt-out period is hereby extended until Monday, October 31, 2005.

9) The extension of the opt-out period does not constitute a ruling as to whether or not those cattle producers or sellers who failed to meet the previously set opt-out date may opt out by virtue of the extension of the opt-out period. That will be determined by a later Order.

10) As to custom feedlots that cannot be reached by telephone, or do not agree to assist plaintiffs, plaintiffs shall mail a further notice of the class action in the same form as previously used but with the new opt-out date. Plaintiffs shall also mail a copy of the Order and Opinion (Doc. 436) entered on the same date as this Order and Opinion.

Dated this 5th day of August, 2005.

BY THE COURT:



CHARLES B. KORNMAN  
United States District Judge

ATTEST:

JOSEPH HAAS, CLERK

BY: 

DEPUTY

(SEAL)